

PETER R. BUEHLER

IBLA 82-669

Decided September 24, 1982

Appeal from termination of acquired lands oil and gas lease ES 16233.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rental

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the rental payment is received within 20 days after the date of termination.

3. Oil and Gas Leases: Reinstatement

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing the rental after it was due does not constitute reasonable diligence. Late payment is not justified by the fact that the lessee did not receive

a courtesy notice from the Bureau of Land Management, or the fact that he received erroneous advice from BLM employees.

APPEARANCES: Peter R. Buehler, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Peter R. Buehler appeals from the termination of acquired lands oil and gas lease ES 16233. 1/ The lease automatically terminated by operation of law on December 1, 1981, for failure to pay the annual rental, due as of that date. Rental was received by BLM on January 22 and February 10, 1982. 2/

On appeal appellant contends that he did not receive a billing for ES 16233 for 1981; that he called the Eastern States Office in Alexandria, Virginia, on December 31, 1981, and also the accounting office in Denver, Colorado, inquiring about the billing; that he was assured by both BLM offices that if his payment were received by January 15, 1982, the lease would remain in effect; that he made a rental payment in early January 1982 to the Denver office and mailed another payment on January 11, 1982, to BLM in Alexandria, and that the latter was received by BLM on January 15, 1982.

1/ There is no decision from the Bureau of Land Management (BLM) in the case file. A memorandum from the Eastern States Director, BLM, to the Board, dated Sept. 8, 1982, explains the procedure of the Eastern States Office for notifying lessees of lease termination as follows:

"Lessees receive a notice of lease termination only if annual rental is received in this office within 20 days of the anniversary date of the lease. This notice outlines the lessees' rights to reinstatement and the procedures to be followed in filing a petition. If rental is received beyond the 20-day period, it is returned by decision letter setting forth the absence of authority to reinstate. No official notification of termination is sent to the lessee if no rental is received."

Although the memorandum indicates that when rental is received beyond the 20-day period a decision letter is issued, apparently because of the timing in this case (payment received Jan. 22 and appeal letter filed with BLM on Feb. 4) no decision was issued. However, clearly BLM should have responded to the Feb. 4 letter (even though Buehler stated that he wished "to appeal your decision to terminate lease ES 16233") with a decision, rather than forwarding the case to this Board without a decision. We will consider the appeal, however, since it would serve no useful purpose to return the case to BLM for decision.

2/ In a letter received by the Board on Apr. 22, 1982, Buehler stated:

"I would hope that you will conclude that I made every effort possible to pay the rental due. In fact I paid the rental twice in hopes that at least one of the payments would have met the required due dates."

[1] An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates by operation of law if the annual rental payment is not received in the proper office of BLM on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days of the anniversary date and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976).

[2] Appellant's rental payment was due on December 1, 1981, and BLM's receipts for payment show that the rental was received by BLM on January 22 and February 10, 1982. ^{3/} Since the provisions governing reinstatement of an oil and gas lease terminated by operation of law for untimely payment of rent are statutory, the Department has no authority to reinstate a lease that has terminated for that reason unless the payment is actually received or tendered at the proper office within 20 days after the anniversary date. That did not occur in this case. Consequently, the lease is not eligible for reinstatement by this Board. *Trend Resources Limited*, 64 IBLA 383 (1982); *Sun Oil Co.*, 63 IBLA 26 (1982).

[3] Even if the rental had been paid within 20 days of the due date, appellant's lease could not have been reinstated. "Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2). Mailing or delivery of the payment after it is due does not meet this requirement. *Apostolos Paliombeis*, 64 IBLA 119 (1982); *Apostolos Paliombeis*, 35 IBLA 180 (1978).

Late payment may be justified if it is attributable to causes beyond the lessee's control. *I. W. Lovelady, Lessee*, 64 IBLA 123 (1982). The Board has held that the lack of a courtesy notice from BLM does not justify late payment. *William A. Klug*, 43 IBLA 255 (1979); *Emma Pace*, 35 IBLA 143 (1978). As for appellant's argument that he was relying on advice of BLM employees, it is clearly appellant's burden to know the Department's regulations. 44 U.S.C. § 1507 (1976); *Trend Resources Limited, supra*; *Overthrust Oil and Gas Corp.*, 52 IBLA 119, 88 I.D. 38 (1981). Reliance on the erroneous advice of BLM employees is not sufficient to relieve appellant of an obligation imposed by statute. *Trend Resources Limited, supra*; see *Reichold Energy Corp. v. Andrus*, No. 79-1274 (D.D.C. Apr. 29, 1980).

^{3/} Appellant claims that he has a return receipt from the Postal Service showing receipt by BLM on Jan. 15, 1982, but no such receipt is included in the case file or attached to his statement of reasons. In light of our resolution of this appeal, it is irrelevant whether appellant can prove that payment was received on Jan. 15, 1982.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

